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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/573,235 | 05/14/2007 | Ian Spence | 12836-6 | 7646 |
| 757 7590 06/14/2010 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610 | | | | |
| EXAMINER | | | | |
| DEUBLE, MARK A | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3651 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 06/14/2010 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,235

Applicant(s)

SPENCE ET AL.

Examiner

MARK A. DEUBLE

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 52,55-58,83 and 87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,19,20,25 and 26 is/are rejected.
- 7) ☒ Claim(s) 9,10,13,22,23,28,59-62,65,66,71,73,74,78 and 82 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Continuation of Disposition of Claims: Claims pending in the application are 1-2, 4-10, 13, 19-20, 22-23, 25-26, 28, 52, 54-58, 59-62, 65-66, 71, 73-74, 78, 82, 83 and 87 .

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-2, 4-10, 13, 19-20, 22-23, 25-26, 28, 59-62, 65-66, 71, 73-74, 78, and 82 in the reply filed on March 19, 2010 is acknowledged.
2. Claims 62, 54-58, 83, and 87 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 19, 2010.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4-8, 19-20 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Tincati (DE 199 03 319).

Tincati shows an adjustable star wheel that include a plurality of pockets distributed about the star wheel that rotate about a central axis. Each pocket is defined by two pairs of opposed, spaced apart fingers 4a/4b, with each pair being spaced from the other in the axial direction on a common shaft. Each finger is elongated radially and provides a contact surface that contacting a container when received in the pocket. The fingers of each pair are rotatably mounted on shafts located at an end of the fingers closest to the central axis so that they are rotatable opposite senses within respective ranges of movement and so that neighboring fingers from adjacent pockets are in a crossed configuration. Each shaft extends substantially parallel to

the central axis located so that the fingers are rotatable within a range of movement to adjust the width of the pocket. A setting means operative to set the rotatable finger in substantially any position within the range of movement is formed by a toothed common drive means 8 that includes teeth on the fingers that are rotably driven by the common drive means. The members 6 form a movable back plate operative to be moved substantially radially into and out from the pocket. These back plates are moved by the common drive means 8. Thus Tincati shows all the structure required by claims 1-2, 4-8, 19-20 and 25-26.

5. Claims 1-2, 4-8, and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Trebbi et al. (EP 0 659 683).

Trebbi shows an adjustable star wheel that include a plurality of pockets distributed about the star wheel that rotate about a central axis in the direction of arrow 9. Each pocket is defined a pair of opposed, spaced apart fingers 34. Each finger is elongated radially and provides a contact surface that contacting a container when received in the pocket. The fingers of each pair are rotatably mounted on shafts located at an end of the fingers closest to the central axis so that they are rotatable opposite senses within respective ranges of movement and so that neighboring fingers from adjacent pockets are in a crossed configuration. Each shaft extends substantially parallel to the central axis located so that the fingers are rotatable within a range of movement to adjust the width of the pocket. A setting means operative to set the rotatable finger in substantially any position within the range of movement is formed by a toothed common drive means 61/62/86/87 that includes teeth on the fingers that are rotably driven by the common drive means. The members 35 form a movable back plate operative to be moved substantially

radially into and out from the pocket. These back plates are moved by the common drive means. Thus Trebbi et al. shows all the structure required by claims 1-2, 4-8, and 25-26.

Allowable Subject Matter

6. Claims 9-10, 13, 22-23, 28, 59-62, 65-66, 71, 73-74, 78, and 82 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK A. DEUBLE whose telephone number is (571)272-6912. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark A. Deuble/
Primary Examiner
Art Unit 3651

md